

AMENDED IN SENATE JUNE 26, 2007

AMENDED IN ASSEMBLY APRIL 26, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1165

Introduced by Assembly Member Maze
(Coauthors: Assembly Members Sharon Runner and Spitzer)

February 23, 2007

An act to amend Sections 13353.1, 13353.2, 22651, 42009, and 42010 of, and to add Sections 13389 and 23154 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1165, as amended, Maze. Driving under the influence: repeat offense.

(1) Existing law makes it unlawful to operate a motor vehicle while under the influence of alcohol or drugs, or both, or when the driver has a specified percent, by weight, of alcohol in his or her blood, or if the driver is addicted to the use of any drug. A separate provision makes it unlawful to engage in this conduct and to drive in a certain unlawful manner if that conduct causes bodily injury to a person other than the driver.

This bill would additionally make it unlawful for a person who is on probation for a violation of either of the above driving under-the-influence offenses to operate a motor vehicle at any time with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test. The bill

would impose additional sanctions on persons found to violate this prohibition.

Because the bill would create a new crime, the bill would impose a state-mandated local program.

(2) Existing law authorizes the Department of Motor Vehicles to revoke a person's driving privilege if he or she refuses an officer's request to submit to, or fails to complete, a preliminary alcohol screening ~~testing~~ test if the refusal occurs within 10 years of a conviction of vehicular manslaughter committed in the operation of a vehicle while intoxicated.

This bill would delete obsolete references.

(3) *This bill would become operative on January 1, 2009.*

~~(3)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13353.1 of the Vehicle Code is amended
2 to read:

3 13353.1. (a) If a person refuses an officer's request to submit
4 to, or fails to complete, a preliminary alcohol screening test
5 pursuant to Section 13388 or 13389, upon the receipt of the
6 officer's sworn statement, submitted pursuant to Section 13380,
7 that the officer had reasonable cause to believe the person had
8 been driving a motor vehicle in violation of Section 23136 or
9 23154, and that the person had refused to submit to, or did not
10 complete, the test after being requested by the officer, the
11 department shall do one of the following:

12 (1) Suspend the person's privilege to operate a motor vehicle
13 for a period of one year.

14 (2) Revoke the person's privilege to operate a motor vehicle for
15 a period of two years if the refusal occurred within 10 years of
16 either of the following:

1 (A) A separate violation of subdivision (a) of Section 23136,
2 that resulted in a finding of a violation, or a separate violation, that
3 resulted in a conviction, of Section 23103, as specified in Section
4 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of
5 the Penal Code, or of subdivision (a) or (b) of Section 192.5 of
6 that code.

7 (B) A suspension or revocation of the person's privilege to
8 operate a motor vehicle if that action was taken pursuant to this
9 section or Section 13353 or 13353.2 for an offense that occurred
10 on a separate occasion.

11 (3) Revoke the person's privilege to operate a motor vehicle for
12 a period of three years if the refusal occurred within 10 years of
13 any of the following:

14 (A) Two or more separate violations of subdivision (a) of
15 Section 23136, that resulted in findings of violations, or two or
16 more separate violations, that resulted in convictions, of Section
17 23103, as specified in Section 23103.5, of Section 23140, 23152,
18 or 23153, of Section 191.5 of the Penal Code, or of subdivision
19 (a) or (b) of Section 192.5 of that code, or any combination thereof.

20 (B) Two or more suspensions or revocations of the person's
21 privilege to operate a motor vehicle if those actions were taken
22 pursuant to this section, or Section 13353 or 13353.2, for offenses
23 that occurred on separate occasions.

24 (C) Any combination of two or more of the convictions or
25 administrative suspensions or revocations described in
26 subparagraph (A) or (B).

27 (b) For the purposes of this section, a conviction of any offense
28 in any state, territory, or possession of the United States, the
29 District of Columbia, the Commonwealth of Puerto Rico, or
30 Canada that, if committed in this state, would be a violation of
31 Section 23103, as specified in Section 23103.5, or Section 23140,
32 23152, or 23153, or Section 191.5 or subdivision (a) or (b) of
33 Section 192.5 of the Penal Code, is a conviction of that particular
34 section of the Vehicle or Penal Code.

35 (c) The notice of the order of suspension or revocation under
36 this section shall be served on the person by the peace officer
37 pursuant to Section 13388 and shall not become effective until 30
38 days after the person is served with that notice. The notice of the
39 order of suspension or revocation shall be on a form provided by
40 the department. If the notice of the order of suspension or

1 revocation has not been served by the peace officer pursuant to
2 Section 13388, the department immediately shall notify the person
3 in writing of the action taken. The peace officer who serves the
4 notice, or the department, if applicable, also shall provide, if the
5 officer or department, as the case may be, determines that it is
6 necessary to do so, the person with the appropriate non-English
7 notice developed pursuant to subdivision (d) of Section 14100.

8 (d) Upon the receipt of the officer's sworn statement, the
9 department shall review the record. For the purposes of this section,
10 the scope of the administrative review shall cover all of the
11 following issues:

12 (1) Whether the peace officer had reasonable cause to believe
13 the person had been driving a motor vehicle in violation of Section
14 23136.

15 (2) Whether the person was lawfully detained.

16 (3) Whether the person refused to submit to, or did not complete,
17 the test after being requested to do so by a peace officer.

18 (e) The person may request an administrative hearing pursuant
19 to Section 13558. Except as provided in subdivision (e) of Section
20 13558, the request for an administrative hearing does not stay the
21 order of suspension or revocation.

22 *SEC. 2. Section 13353.2 of the Vehicle Code is amended to*
23 *read:*

24 13353.2. (a) The department shall immediately suspend the
25 privilege of a person to operate a motor vehicle for any one of the
26 following reasons:

27 (1) The person was driving a motor vehicle when the person
28 had 0.08 percent or more, by weight, of alcohol in his or her blood.

29 (2) The person was under 21 years of age and had a
30 blood-alcohol concentration of 0.01 percent or greater, as measured
31 by a preliminary alcohol screening test, or other chemical test.

32 (3) The person was driving a vehicle that requires a commercial
33 driver's license when the person had a 0.04 percent or more, by
34 weight, of alcohol in his or her blood.

35 (4) *The person was driving a motor vehicle when both of the*
36 *following apply:*

37 (A) *The person was on probation for a violation of Section*
38 *23152 or 23153.*

1 (B) *The person had a 0.01 percent or more, by weight, of alcohol*
2 *in his or her blood, as measured by a preliminary alcohol screening*
3 *test or other chemical test.*

4 (b) The notice of the order of suspension under this section shall
5 be served on the person by a peace officer pursuant to Section
6 13388 or 13382. The notice of the order of suspension shall be on
7 a form provided by the department. If the notice of the order of
8 suspension has not been served upon the person by the peace officer
9 pursuant to Section 13388 or 13382, upon the receipt of the report
10 of a peace officer submitted pursuant to Section 13380, the
11 department shall mail written notice of the order of the suspension
12 to the person at the last known address shown on the department's
13 records and, if the address of the person provided by the peace
14 officer's report differs from the address of record, to that address.

15 (c) The notice of the order of suspension shall clearly specify
16 the reason and statutory grounds for the suspension, the effective
17 date of the suspension, the right of the person to request an
18 administrative hearing, the procedure for requesting an
19 administrative hearing, and the date by which a request for an
20 administrative hearing shall be made in order to receive a
21 determination prior to the effective date of the suspension.

22 (d) The department shall make a determination of the facts in
23 subdivision (a) on the basis of the report of a peace officer
24 submitted pursuant to Section 13380. The determination of the
25 facts, after administrative review pursuant to Section 13557, by
26 the department is final, unless an administrative hearing is held
27 pursuant to Section 13558 and any judicial review of the
28 administrative determination after the hearing pursuant to Section
29 13559 is final.

30 (e) The determination of the facts in subdivision (a) is a civil
31 matter that is independent of the determination of the person's
32 guilt or innocence, shall have no collateral estoppel effect on a
33 subsequent criminal prosecution, and shall not preclude the
34 litigation of the same or similar facts in the criminal proceeding.
35 If a person is acquitted of criminal charges relating to a
36 determination of facts under subdivision (a), or if the person's
37 driver's license was suspended pursuant to Section 13388 and the
38 department finds no basis for a suspension pursuant to that section,
39 the department shall immediately reinstate the person's privilege
40 to operate a motor vehicle if the department has suspended it

1 administratively pursuant to subdivision (a), and the department
2 shall return or reissue for the remaining term any driver's license
3 that has been taken from the person pursuant to Section 13382 or
4 otherwise. Notwithstanding subdivision (b) of Section 13558, if
5 criminal charges under Section 23140, 23152, or 23153 are not
6 filed by the district attorney because of a lack of evidence, or if
7 those charges are filed but are subsequently dismissed by the court
8 because of an insufficiency of evidence, the person has a renewed
9 right to request an administrative hearing before the department.
10 The request for a hearing shall be made within one year from the
11 date of arrest.

12 (f) The department shall furnish a form that requires a detailed
13 explanation specifying which evidence was defective or lacking
14 and detailing why that evidence was defective or lacking. The form
15 shall be made available to the person to provide to the district
16 attorney. The department shall hold an administrative hearing, and
17 the hearing officer shall consider the reasons for the failure to
18 prosecute given by the district attorney on the form provided by
19 the department. If applicable, the hearing officer shall consider
20 the reasons stated on the record by a judge who dismisses the
21 charges. ~~No~~ A fee shall *not* be imposed pursuant to Section 14905
22 for the return or reissuing of a driver's license pursuant to this
23 subdivision. The disposition of a suspension action under this
24 section does not affect ~~any~~ *an* action to suspend or revoke the
25 person's privilege to operate a motor vehicle under ~~any other~~
26 *another* provision of this code, including, but not limited to, Section
27 13352 or 13353, or Chapter 3 (commencing with Section 13800).

28 ~~SEC. 2.~~

29 *SEC. 3.* Section 13389 is added to the Vehicle Code, to read:

30 13389. (a) If a peace officer lawfully detains a person
31 previously convicted of Section 23152 or 23153 who is driving a
32 motor vehicle, while the person is on probation for a violation of
33 Section 23152 or 23153, and the officer has reasonable cause to
34 believe that the person is in violation of Section 23154, the officer
35 shall request that the person take a preliminary alcohol screening
36 test to determine the presence of alcohol in the person, if a
37 preliminary alcohol screening test device is immediately available.
38 If a preliminary alcohol screening test device is not immediately
39 available, the officer may request the person to submit to chemical

1 testing of his or her blood, breath, or urine, conducted pursuant to
2 Section 23612.

3 (b) If the person refuses to take, or fails to complete, the
4 preliminary alcohol screening test or refuses to take or fails to
5 complete a chemical test if a preliminary alcohol device is not
6 immediately available, or if the person takes the preliminary
7 alcohol screening test and that test reveals a blood-alcohol
8 concentration of 0.01 percent or greater, the officer shall proceed
9 as follows:

10 (1) The officer, acting on behalf of the department, shall serve
11 the person with a notice of an order of suspension of the person's
12 driving privilege.

13 (2) (A) The officer shall take possession of any driver's license
14 issued by this state that is held by the person. When the officer
15 takes possession of a valid driver's license, the officer shall issue,
16 on behalf of the department, a temporary driver's license.

17 (B) The temporary driver's license shall be an endorsement on
18 the notice of the order of suspension and shall be valid for 30 days
19 from the date of issuance, or until receipt of the order of suspension
20 from the department, whichever occurs first.

21 (3) (A) The officer shall immediately forward a copy of the
22 completed notice of order of suspension form, and any driver's
23 license taken into possession under paragraph (2), with the report
24 required by Section 13380, to the department.

25 (B) For the purposes of subparagraph (A), "immediately" means
26 on or before the end of the fifth ordinary business day after the
27 notice of order of suspension was served.

28 (c) For the purposes of this section, a preliminary alcohol
29 screening test device is an instrument designed and used to measure
30 the presence of alcohol in a person based on a breath sample.

31 ~~SEC. 3.~~

32 *SEC. 4.* Section 22651 of the Vehicle Code is amended to read:

33 22651. A peace officer, as defined in Chapter 4.5 (commencing
34 with Section 830) of Title 3 of Part 2 of the Penal Code, or any
35 regularly employed and salaried employee, who is engaged in
36 directing traffic or enforcing parking laws and regulations, of a
37 city, county, or jurisdiction of a state agency in which a vehicle is
38 located, may remove a vehicle located within the territorial limits
39 in which the officer or employee may act, under any of the
40 following circumstances:

1 (a) When a vehicle is left unattended upon any bridge, viaduct,
2 or causeway or in a tube or tunnel where the vehicle constitutes
3 an obstruction to traffic.

4 (b) When a vehicle is parked or left standing upon a highway
5 in a position so as to obstruct the normal movement of traffic or
6 in a condition so as to create a hazard to other traffic upon the
7 highway.

8 (c) When a vehicle is found upon a highway or a public lands
9 and a report has previously been made that the vehicle is stolen or
10 a complaint has been filed and a warrant thereon issued charging
11 that the vehicle is embezzled.

12 (d) When a vehicle is illegally parked so as to block the entrance
13 to a private driveway and it is impractical to move the vehicle from
14 in front of the driveway to another point on the highway.

15 (e) When a vehicle is illegally parked so as to prevent access
16 by firefighting equipment to a fire hydrant and it is impracticable
17 to move the vehicle from in front of the fire hydrant to another
18 point on the highway.

19 (f) When a vehicle, except a highway maintenance or
20 construction equipment, is stopped, parked, or left standing for
21 more than four hours upon the right-of-way of a freeway which
22 has full control of access and no crossings at grade and the driver,
23 if present, cannot move the vehicle under its own power.

24 (g) When the person or persons in charge of a vehicle upon a
25 highway or public lands are, by reason of physical injuries or
26 illness, incapacitated to an extent so as to be unable to provide for
27 its custody or removal.

28 (h) (1) When an officer arrests a person driving or in control
29 of a vehicle for an alleged offense and the officer is, by this code
30 or other law, required or permitted to take, and does take, the
31 person into custody.

32 (2) When an officer serves a notice of an order of suspension
33 or revocation pursuant to Section 13388 or 13389.

34 (i) (1) When a vehicle, other than a rented vehicle, is found
35 upon a highway or any public lands, or is removed pursuant to this
36 code, and it is known that the vehicle has been issued five or more
37 notices of parking violations to which the owner or person in
38 control of the vehicle has not responded within 21 calendar days
39 of notice of citation issuance or citation issuance or 14 calendar
40 days of the mailing of a notice of delinquent parking violation to

1 the agency responsible for processing notices of parking violation
2 or the registered owner of the vehicle is known to have been issued
3 five or more notices for failure to pay or failure to appear in court
4 for traffic violations for which a certificate has not been issued by
5 the magistrate or clerk of the court hearing the case showing that
6 the case has been adjudicated or concerning which the registered
7 owner's record has not been cleared pursuant to Chapter 6
8 (commencing with Section 41500) of Division 17, the vehicle may
9 be impounded until that person furnishes to the impounding law
10 enforcement agency all of the following:

11 (A) Evidence of his or her identity.

12 (B) An address within this state at which he or she can be
13 located.

14 (C) Satisfactory evidence that all parking penalties due for the
15 vehicle and any other vehicle registered to the registered owner
16 of the impounded vehicle, and all traffic violations of the registered
17 owner, have been cleared.

18 (2) The requirements in subparagraph (C) of paragraph (1) shall
19 be fully enforced by the impounding law enforcement agency on
20 and after the time that the Department of Motor Vehicles is able
21 to provide access to the necessary records.

22 (3) A notice of parking violation issued for an unlawfully parked
23 vehicle shall be accompanied by a warning that repeated violations
24 may result in the impounding of the vehicle. In lieu of furnishing
25 satisfactory evidence that the full amount of parking penalties or
26 bail has been deposited, that person may demand to be taken
27 without unnecessary delay before a magistrate, for traffic offenses,
28 or a hearing examiner, for parking offenses, within the county in
29 which the offenses charged are alleged to have been committed
30 and who has jurisdiction of the offenses and is nearest or most
31 accessible with reference to the place where the vehicle is
32 impounded. Evidence of current registration shall be produced
33 after a vehicle has been impounded, or, at the discretion of the
34 impounding law enforcement agency, a notice to appear for
35 violation of subdivision (a) of Section 4000 shall be issued to that
36 person.

37 (4) A vehicle shall be released to the legal owner, as defined in
38 Section 370, if the legal owner does all of the following:

39 (A) Pays the cost of towing and storing the vehicle.

1 (B) Submits evidence of payment of fees as provided in Section
2 9561.

3 (C) Completes an affidavit in a form acceptable to the
4 impounding law enforcement agency stating that the vehicle was
5 not in possession of the legal owner at the time of occurrence of
6 the offenses relating to standing or parking. A vehicle released to
7 a legal owner under this subdivision is a repossessed vehicle for
8 purposes of disposition or sale. The impounding agency shall have
9 a lien on any surplus that remains upon sale of the vehicle to which
10 the registered owner is or may be entitled, as security for the full
11 amount of the parking penalties for all notices of parking violations
12 issued for the vehicle and for local administrative charges imposed
13 pursuant to Section 22850.5. The legal owner shall promptly remit
14 to, and deposit with, the agency responsible for processing notices
15 of parking violations from that surplus, on receipt thereof, full
16 amount of the parking penalties for all notices of parking violations
17 issued for the vehicle and for local administrative charges imposed
18 pursuant to Section 22850.5.

19 (5) The impounding agency that has a lien on the surplus that
20 remains upon the sale of a vehicle to which a registered owner is
21 entitled pursuant to paragraph (4) has a deficiency claim against
22 the registered owner for the full amount of the parking penalties
23 for all notices of parking violations issued for the vehicle and for
24 ~~any~~ local administrative charges imposed pursuant to Section
25 22850.5, less the amount received from the sale of the vehicle.

26 (j) When a vehicle is found illegally parked and there are no
27 license plates or other evidence of registration displayed, the
28 vehicle may be impounded until the owner or person in control of
29 the vehicle furnishes the impounding law enforcement agency
30 evidence of his or her identity and an address within this state at
31 which he or she can be located.

32 (k) When a vehicle is parked or left standing upon a highway
33 for 72 or more consecutive hours in violation of a local ordinance
34 authorizing removal.

35 (l) When a vehicle is illegally parked on a highway in violation
36 of a local ordinance forbidding standing or parking and the use of
37 a highway, or a portion thereof, is necessary for the cleaning,
38 repair, or construction of the highway, or for the installation of
39 underground utilities, and signs giving notice that the vehicle may
40 be removed are erected or placed at least 24 hours prior to the

1 removal by ~~local authorities~~ *a local authority* pursuant to the
2 ordinance.

3 (m) Wherever the use of the highway, or a portion of the
4 highway, is authorized by ~~local authorities~~ *a local authority* for a
5 purpose other than the normal flow of traffic or for the movement
6 of equipment, articles, or structures of unusual size, and the parking
7 of a vehicle would prohibit or interfere with that use or movement,
8 and signs giving notice that the vehicle may be removed are erected
9 or placed at least 24 hours prior to the removal by ~~local authorities~~
10 *a local authority* pursuant to the ordinance.

11 (n) Whenever a vehicle is parked or left standing where local
12 authorities, by resolution or ordinance, have prohibited parking
13 and have authorized the removal of vehicles. A vehicle shall not
14 be removed unless signs are posted giving notice of the removal.

15 (o) (1) When a vehicle is found or operated upon a highway,
16 public lands, or an offstreet parking facility with a registration
17 expiration date in excess of six months before the date it is found
18 or operated on the highway, public lands, or the offstreet parking
19 facility. However, whenever the vehicle is occupied, only a peace
20 officer, as defined in Chapter 4.5 (commencing with Section 830)
21 of Title 3 of Part 2 of the Penal Code, may remove the vehicle.
22 For the purposes of this subdivision, the vehicle shall be released
23 to the owner or person in control of the vehicle only after the owner
24 or person furnishes the storing law enforcement agency with proof
25 of current registration and a currently valid driver's license to
26 operate the vehicle.

27 (2) As used in this subdivision, "offstreet parking facility" means
28 an offstreet facility held open for use by the public for parking
29 vehicles and includes a publicly owned facility for offstreet
30 parking, and privately owned facilities for offstreet parking where
31 a fee is not charged for the privilege to park and which are held
32 open for the common public use of retail customers.

33 (p) When the peace officer issues the driver of a vehicle a notice
34 to appear for a violation of Section 12500, 14601, 14601.1,
35 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has
36 not been impounded pursuant to Section 22655.5. A vehicle so
37 removed from the highway or public lands, or from private property
38 after having been on a highway or public lands, shall not be
39 released to the registered owner or his or her agent, except upon
40 presentation of the registered owner's or his or her agent's currently

1 valid driver's license to operate the vehicle and proof of current
2 vehicle registration, or upon order of a court.

3 (q) Whenever a vehicle is parked for more than 24 hours on a
4 portion of highway that is located within the boundaries of a
5 common interest development, as defined in subdivision (c) of
6 Section 1351 of the Civil Code, and signs, as required by Section
7 22658.2, have been posted on that portion of highway providing
8 notice to drivers that vehicles parked thereon for more than 24
9 hours will be removed at the owner's expense, pursuant to a
10 resolution or ordinance adopted by the local authority.

11 (r) When a vehicle is illegally parked and blocks the movement
12 of a legally parked vehicle.

13 (s) (1) When a vehicle, except highway maintenance or
14 construction equipment, an authorized emergency vehicle, or a
15 vehicle which is properly permitted or otherwise authorized by
16 the Department of Transportation, is stopped, parked, or left
17 standing for more than eight hours within a roadside rest area or
18 viewpoint.

19 (2) For purposes of this subdivision, a roadside rest area or
20 viewpoint is a publicly maintained vehicle parking area, adjacent
21 to a highway, utilized for the convenient, safe stopping of a vehicle
22 to enable motorists to rest or to view the scenery. If two or more
23 roadside rest areas are located on opposite sides of the highway,
24 or upon the center divider, within seven miles of each other, then
25 that combination of rest areas is considered to be the same rest
26 area.

27 (t) When a peace officer issues a notice to appear for a violation
28 of Section 25279.

29 ~~SEC. 4.~~

30 *SEC. 5.* Section 23154 is added to the Vehicle Code, to read:

31 23154. (a) It is unlawful for a person who is on probation for
32 a violation of Section 23152 or 23153 to operate a motor vehicle
33 at any time with a blood-alcohol concentration of 0.01 percent or
34 greater, as measured by a preliminary alcohol screening test or
35 other chemical test.

36 (b) A person may be found to be in violation of subdivision (a)
37 if the person was, at the time of driving, on probation for a violation
38 of Section 23152 or 23153, and the trier of fact finds that the person
39 had consumed an alcoholic beverage and was driving a vehicle
40 with a blood-alcohol concentration of 0.01 percent or greater, as

1 measured by a preliminary alcohol screening test or other chemical
2 test.

3 (c) (1) A person convicted of a violation of Section 23152 or
4 23153 who drives a motor vehicle is deemed to have given his or
5 her consent to a preliminary alcohol screening test or other
6 chemical test for the purpose of determining the presence of alcohol
7 in the person, if lawfully detained for an alleged violation of
8 subdivision (a).

9 (2) The testing shall be incidental to a lawful detention and
10 administered at the direction of a peace officer having reasonable
11 cause to believe the person is driving a motor vehicle in violation
12 of subdivision (a).

13 (3) The person shall be told that his or her failure to submit to,
14 or the failure to complete, a preliminary alcohol screening test or
15 other chemical test as requested will result in the suspension or
16 revocation of the person's privilege to operate a motor vehicle for
17 a period of one year to three years, as provided in Section 13353.1.

18 ~~SEC. 5.~~

19 *SEC. 6.* Section 42009 of the Vehicle Code is amended to read:

20 42009. (a) For an offense specified in subdivision (b),
21 committed by the driver of a vehicle within a highway construction
22 or maintenance area, during any time when traffic is regulated or
23 restricted through or around that area pursuant to Section 21367,
24 or when the highway construction or maintenance is actually being
25 performed in the area by workers acting in their official capacity,
26 the fine, in a misdemeanor case, shall be double the amount
27 otherwise prescribed. In an infraction case, the fine shall be one
28 category higher than the penalty otherwise prescribed by the
29 uniform traffic penalty schedule established pursuant to Section
30 40310.

31 (b) A violation of the following is an offense that is subject to
32 subdivision (a):

33 (1) Section 21367, relating to regulation of traffic at a
34 construction site.

35 (2) Article 3 (commencing with Section 21450) of Chapter 2
36 of Division 11, relating to obedience to traffic devices.

37 (3) Chapter 3 (commencing with Section 21650) of Division
38 11, relating to driving, overtaking, and passing.

39 (4) Chapter 4 (commencing with Section 21800) of Division
40 11, relating to yielding the right-of-way.

(5) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

(6) Chapter 7 (commencing with Section 22348) of Division 11, relating to speed limits.

(7) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(8) Section 23103, relating to reckless driving.

(9) Section 23104, relating to reckless driving which results in bodily injury to another.

(10) Section 23109, relating to speed contests.

(11) Section 23152, relating to driving under the influence of alcohol or a controlled substance, or a violation of Section 23103, as specified in Section 23103.5, relating to alcohol-related reckless driving.

(12) Section 23153, relating to driving under the influence of alcohol or a controlled substance, which results in bodily injury to another.

(13) Section 23220, relating to drinking while driving.

(14) Section 23221, relating to drinking in a motor vehicle while on the highway.

(15) Section 23154, relating to convicted drunk drivers operating a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater.

(16) Section 23222, relating to driving while possessing an open alcoholic beverage container.

(17) Section 23223, relating to being in a vehicle on the highway while possessing an open alcoholic beverage container.

(18) Section 23224, relating to being a driver or passenger under the age of 21 possessing an open alcoholic beverage container.

(19) Section 23225, relating to being the owner or driver of a vehicle in which there is an open alcoholic beverage container.

(20) Section 23226, relating to being a passenger in a vehicle in which there is an open alcoholic beverage container.

(c) This section applies only when construction or maintenance work is actually being performed by workers, and there are work zone traffic control devices, traffic controls or warning signs, or any combination of those, to notify motorists and pedestrians of construction or maintenance workers in the area.

~~SEC. 6.~~

SEC. 7. Section 42010 of the Vehicle Code is amended to read:

1 42010. (a) For an offense specified in subdivision (b) that is
2 committed by the driver of a vehicle within an area that has been
3 designated as a Safety Enhancement-Double Fine Zone pursuant
4 to Section 97 and following of the Streets and Highways Code,
5 the fine, in a misdemeanor case, shall be double the amount
6 otherwise prescribed, and, in an infraction case, the fine shall be
7 one category higher than the penalty otherwise prescribed by the
8 uniform traffic penalty schedule established pursuant to Section
9 40310.

10 (b) A violation of the following is an offense that is subject to
11 subdivision (a):

12 (1) Chapter 3 (commencing with Section 21650) of Division
13 11, relating to driving, overtaking, and passing.

14 (2) Chapter 7 (commencing with Section 22348) of Division
15 11, relating to speed limits.

16 (3) Section 23103, relating to reckless driving.

17 (4) Section 23104, relating to reckless driving that results in
18 bodily injury to another.

19 (5) Section 23109, relating to speed contests.

20 (6) Section 23152, relating to driving under the influence of
21 alcohol or a controlled substance, or a violation of Section 23103,
22 as specified in Section 23103.5, relating to alcohol-related reckless
23 driving.

24 (7) Section 23153, relating to driving under the influence of
25 alcohol or a controlled substance, which results in bodily injury
26 to another.

27 (8) Section 23154, relating to convicted drunk drivers operating
28 a motor vehicle with a blood-alcohol concentration of 0.01 percent
29 or greater.

30 (9) Section 23220, relating to drinking while driving.

31 (10) Section 23221, relating to drinking in a motor vehicle while
32 on the highway.

33 (11) Section 23222, relating to driving while possessing an open
34 alcoholic beverage container.

35 (12) Section 23223, relating to being in a vehicle on the highway
36 while possessing an open alcoholic beverage container.

37 (13) Section 23224, relating to being a driver or passenger under
38 21 years of age possessing an open alcoholic beverage container.

39 (14) Section 23225, relating to being the owner or driver of a
40 vehicle in which there is an open alcoholic beverage container.

1 (15) Section 23226, relating to being a passenger in a vehicle
2 in which there is an open alcoholic beverage container.

3 (c) This section applies only when traffic controls or warning
4 signs have been placed pursuant to Section 97 or 97.1 of the Streets
5 and Highways Code.

6 (d) (1) Notwithstanding any other provision of law, the
7 enhanced fine imposed pursuant to this section shall be based only
8 on the base fine imposed for the underlying offense and shall not
9 include any other enhancements imposed pursuant to law.

10 (2) Notwithstanding any other provision of law, any additional
11 penalty, forfeiture, or assessment imposed by any other statute
12 shall be based on the amount of the base fine before enhancement
13 or doubling and shall not be based on the amount of the enhanced
14 fine imposed pursuant to this section.

15 ~~SEC. 7.~~

16 SEC. 8. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 SEC. 9. *This act shall become operative on January 1, 2009.*